

STATE OF VERMONT
PUBLIC SERVICE BOARD

Dig Safe Notice No. 776

In Re: FairPoint Communications, Alleged Violation of)
June 24, 2010, as reported by FairPoint Communications)

Order entered: 9/13/2011

ORDER RE: NOTICE OF PROBABLE VIOLATION

Background

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to FairPoint Communications ("Respondent").
2. Incident Date: June 24, 2010
3. Incident Location: Corner of River Road & Bergeron Road, North Troy, VT
4. Name and Address of Company that Reported the Incident to the Department: FairPoint Communications, 55 West Street, Rutland, VT 05701
5. Date Incident Reported to Effected Utility: June 24, 2010
6. Date NOPV issued by Department: June 24, 2011 (#1843)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. Charles Curtis LLC made a notice of excavation activities to Dig Safe System Inc. to set a pole and pole anchors at this site. FairPoint did not accurately locate and mark all of its underground facilities in the area of the proposed excavation. During the course of the excavation an unmarked FairPoint wire was struck by a power auger. This damage resulted in a phone service outage for approximately 2 hours. Charles Curtis LLC notified FairPoint of the damaged facility. The Department of Public Service issued 11 Notices of Probable Violation (NOPVs) to FairPoint Communications during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7006

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of One Thousand, Two Hundred Dollars (\$1,200.00); attendance at a Department-approved underground damage prevention seminar; submission of the Company's current underground facility damage protection written procedures (Damage Prevention Plan ("DPP")) to the Department; and FairPoint Communications management participation with the Department in a collaborative review of the FairPoint DPP and the implementation of plan revisions for improvement, developed during the review.
10. The Respondent has agreed to take the remedial action(s) recommended by the Department.¹

Conclusion and Order

Because the Respondent has not contested the NOPV, or the allegations therein, we conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.²

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint Communications"), shall pay a civil penalty in the amount of One Thousand, Two Hundred Dollars (\$1,200.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701;

(2) FairPoint Communications shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service ("Department");

(3) FairPoint Communications shall submit its current underground facility damage protection written procedures (Damage Prevention Plan ("DPP")) to the Department; and

(4) FairPoint Communications management shall participate with the Department in a collaborative review of the FairPoint DPP and implement plan revisions for improvement, developed during the review.

1. See, Respondent's filing of 7/22/11.

2. See, Public Service Board Rule 3.807(G).

Dated at Montpelier, Vermont, this 13th day of September, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 13, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.